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06 OCT 17 PM 3:30

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEE V. QUILLAR,

Petitioner,

vs.

V. M. ALMAGER, Warden,

Respondent.

Civil No. 06-2286 H (AJB)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION PURSUANT
TO 28 U.S.C. § 2244(b)(3)(A)
GATEKEEPER PROVISION**

On October 6, 2006, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his conviction in San Diego Superior Court case No. SCE171374. Thus, this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PRIOR FEDERAL HABEAS PETITIONS DENIED ON THE MERITS

On May 30, 2001, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 01cv0968 BTM (BEN). In that petition, Quillar challenged his conviction in San Diego Superior Court case No. SCE171374. On May 29, 2003, this Court denied the petition on the merits. (See Order filed May 29, 2003 in Case No. 01cv0968 at Doc. No. 61.) Quillar appealed that determination. On February 7, 2005, the Ninth Circuit Court of Appeals affirmed this Court's decision. (See Case No. 01cv0968 at Doc. No. 79.)

1 **INSTANT PETITION BARRED BY GATEKEEPER PROVISION**

2 Quillar is now seeking to challenge the same conviction he challenged in his prior federal
3 habeas petition. (See Pet. at 1, 5.) Unless a Petitioner shows he or she has obtained an order
4 from the appropriate court of appeals authorizing the district court to consider a successive
5 petition, the petition may not be filed in the district court. See 28 U.S.C. § 2244(b)(3)(A). Here,
6 there is no indication the Ninth Circuit Court of Appeals has granted Luken leave to file a
7 successive petition.

8 **CONCLUSION**

9 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
10 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
11 Accordingly, the Court **DISMISSES** this action without prejudice to Luken filing a petition in
12 this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. The Clerk
13 of Court shall attach, for Petitioner's convenience, a blank Ninth Circuit Application for Leave
14 to File Second or Successive Petition.

15 **IT IS SO ORDERED.**

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17 DATED: 10/16/06

Marilyn L. Huff

18 Marilyn L. Huff
19 United States District Judge
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